IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/03/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.3684 OF 2003

Rajamani ... Petitioner

-Vs-

1.The Inspector of Police,
Shevapet Police Station, Salem.

2.The Inspector of Police,
Suramangalam Police Station,
Salem.

3.The Dy.Superintendent of Police,
CBCID., Coimbatore. ... Respondents

Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioner : Mr.M.Kandasamy

For respondents: Mr.O.Srinath,
Govt.Advocate (crl.side)

:O R D E R

The petitioner, who is a third party to the proceeding initiated by the first respondent in Cr.No.32/2002 under Sections 465,468,471,42 0 and 120-B IPC and transferred to the file of the second respondent for investigation, has come forward to file the above criminal original petition on averments such as that he is having multifarious business activities of mining, purchase and sale of minerals under the names and styles of M/s.Abirami Mineralas and Chemicals, M/s.Sekar Mines and Sekar Sales Syndicate Etc. and the respondents 1 and 2, under the pretext of doing investigation in the said case on an alleged confession said to have been made by the prime accused in the said case viz. Prabhakaran that in order to over come certain difficulties, he paid a sum of Rs.16 lakhs to the petitioner, have given instructions to the banks to freeze the accounts of the petitioner, which, the petitioner came to know from the letters dated 14.9.2002 addressed by the Salem Branches of Allahabad Bank and the State Bank of India. The petitioner would further state that he has no business dealings or any connection with

the said Prabhakaran and that all his business transactions are covered by cheques and drafts not only keeping the accounts intact but also the tax being paid in the manner required by law.

2. The petitioner, further extracting Section 102 of the Code of Criminal Procedure, which empowers the Police Officer to invoke the power to freeze the bank accounts, would submit that the Section empowers the Investigating Officer to seize the property suspected to have been stolen or creates suspicion of the commission of an offence and without these ingredients being specified, the power granted under Section 102 Cr.P.C. cannot be invoked by the Investigating Officer to freeze the bank accounts of the petitioner as the first and second respondents have resorted to; that the allegation that the bank account is a sequel to the discovery of the commission of the offence is illegal and consequently, the direction of the respondents 1 and 2 issued to the banks to freeze the accounts and deposits of the petitioner is equally illegal; that the respondents 1 and 2 have not followed the procedures established by law; that the petitioner's accounts are the business accounts and the direction issued by the respondents 1 and 2 to freeze the same is susceptible to have great impact and serious consequences on his business; that there was no notice to him by the respondents and on such grounds, the petitioner would ultimately pray to the relief extracted supra.

3. No counter would be filed on the part of the respondents, but the learned Government Advocate on the criminal side would argue on instructions of the respondents and therefore this Court is left with no option but to decide the above petition in consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, in which event it comes to be seen that the petitioner is an independent businessman doing business in mining, purchase and sale of minerals under the names and styles of different companies and that his bank accounts have been ordered to be frozen by the banks concerned including that of some of his family members at the instance of the respondents requiring the banks to freeze the accounts of the petitioner and his companies thus restraining them from operating the accounts consequent to the requisitions made on the part of the first and second respondents vide their letters dated 2.9.2002 and 5.9.2002.

4. It further comes to be known that the respondents have resorted to initiate measures to freeze all the bank accounts of the petitioner and some of his family members on ground that in the confession statement alleged to have been given by an accused viz. Prabhakaran in Cr.No.32/2002, while he was interrogated by the respondents for the offences alleged to have been committed on his part under Sections 465,4 68,471,420 and 120-B IPC registered on the file of the first respondent, he had stated that to ward-off some of the inconveniences which came in the way of operating his business, he paid certain amounts to the petitioner and this statement of the accused in the said case investigated by the respondents 1 and 2 is alleged to have given the cause of action for ordering the freezing of the bank accounts of the petitioner, who is otherwise in no way connected to the said criminal case alleged to have been registered against the said Prabhakaran and investigated

into by the respondents and it is the admitted case of the respondents that the petitioner is neither an accused in the said case nor had he been connected in any other manner regarding the commission of the offence registered and investigated into by the respondents.

5. In the above circumstances, the only question that rages supreme for consideration is `whether it is necessary or incumbent on the part of the respondents 1 and 2 to have ordered the freezing of the bank accounts of the petitioner and that of his family members?'

6. Section 102 of the Code of Criminal Procedure is the provision of law which empowers the Police Officer to do certain acts in the course of investigation wherein the Police Officer may seize any property which may be alleged or suspected to have been stolen or which may be found to be under suspicious circumstances regarding the commission of the offence. This is only regarding seizure of properties having some nexus with the commission of the offence in which event the Police Officer shall seize the property and entrust the same with the custody of the Court and there is no specific mention in the Section regarding the freezing of the accounts which have been rendered by the upper forums of law by means of legal propositions only in adherence to which, the Police Officer could request or order the banks to freeze the accounts of such persons following such procedures required under such circumstances.

7. For the application of the Section, the basic requirements are that the properties sought to be seized or frozen must be either stolen properties or they should have been found to have some nexus with the alleged offence which is under investigation of the Police Officer concerned. So far as the case in hand is concerned, neither any of the requisitions or orders made on the part of the first and second respondents with the banks wherein the petitioner is maintaining the accounts, speaks about such requirements of this provision of law under Section 102 of the Code of Criminal Procedure nor has it been brought forth during the arguments regarding the nexus of the accounts being maintained or operated on the part of the petitioner in the banks with the felon and therefore, preliminarily, it could be concluded that the warranting ingredients of the Section 102 of the Code of Criminal Procedure have not been brought in to the fact situation of the case in hand.

8. Further, on the part of the respondents, they have also not made it clear or explained to the effect as to what is the object sought to be achieved by ordering the bank accounts of the petitioner frozen. This Court is not able to see, by such of the acts perpetrated on the part of the respondent in ordering to freeze the bank accounts of the petitioner, any constructive purpose to be served regarding the investigation of the case registered against a third party on different grounds nor is it the case of the respondents that the operation of the bank accounts by the petitioner is having any nexus or impact or susceptible to impair the investigation.

9. The procedure contemplated by the legal propositions in such event of ordering the freezing of the accounts of any party are also not taken care of by the respondents since it is well established that in case of freezing of

a bank account, the police officer should do two things: he should inform the concerned Magistrate forthwith regarding the prohibitory order and he should also give notice of seizure to the accused and allow him/her to operate the bank account subject to his/her executing the bond undertaking to produce the amounts in Court as and when required. Even this condition in the event of notice has been imposed only against the accused and the petitioner not being an accused, it is farfetched that such conditions are required to be imposed on the petitioner and therefore, so far as the petitioner operating his bank accounts are concerned, this Court is unable to see that such operation is having any nexus or relevance regarding the investigation of the offence registered against the actual accused wherein the subject matter is entirely different having no relationship with the allegation of some confession made by the accused and it is farfetched to freeze the bank accounts of the petitioner and his family members as the respondents No.1 and 2 have resorted to, which is not only undesirable to have resorted to on the part of the respondents 1 and 2 but also with no useful purpose to be served in the case under their investigation.

10. At this juncture, it is relevant to consider the value of the confession of an accused while in custody of the police which is a weak piece of evidence based on which the respondents are not supposed to initiate such drastic steps to impair the business of anyone who is not an accused in the case ordering to freeze the Bank Accounts or obstructing such persons from operating their accounts. In these circumstances, the only irresistible conclusion that could be arrived at by this Court is to order that the respondents 1 and 2 in order to freeze the petitioner's bank accounts have acted in excess than what they are empowered by law particularly when such powers are required to be invoked with utmost restraint while resorted against third parties such as the petitioner.
11. During arguments, the learned counsel for the petitioner besides submitting that the said confessional statement given by the said Prabhakaran has been retracted, has also brought to the notice of this Court the recent order passed by a learned single Judge of this Court in a similar application filed by none other than the son of the petitioner in Crl.O.P.No.24398 of 2002 whereby the learned single Judge, by his order dated 11.10.2002, having assessed the operational sphere of the petitioner's business and the act perpetrated on the part of the respondents in ordering to freeze the bank accounts of the petitioner's son and further analysing Section 102 of the Cr.P.C. and commenting on the same relating to the requisition made on the part of the respondents to freeze the accounts of the petitioner and his son, would find absolutely no justification and would ultimately revoke the prohibitory order issued by the Deputy Superintendent of Police, CBCID, Coimbatore against the son of the petitioner in the same manner as it has been done on the part of the first and second respondents pertaining to the accounts of the petitioner herein in one and the same subject matter. This

Court has had the occasion to go through the said order and is in perfect agreement of not only the conclusions arrived at by the learned single Judge, but also the manner in which the conclusions have been arrived at.

12. On the part of the respondents, the learned Government Advocate

would also cite a judgment of the learned single Judge of this Court delivered in C.ARANGANAYAGAM vs. STATE, BY DIRECTORATE OF VIGILLANCE AND ANTI CORRUPTION, ERODE DETACHMENT, EROD D ANOTHER reported in 2000 MLJ (crl.)20 where, in a case registered by the Directorate of Vigillance and Anti Corruption for the commission of the offence on the part of the accused under Section 13(2) r/w.13(1)(3) of the Prevention of Corruption Act, the learned single Judge, has arrived at the conclusion that

"Every Police Officer acting under Section 102(1) Cr.P.C. shall forthwith report the seizure to the Magistrate having jurisdiction. Simply because the first respondent failed to comply with Section 102(3), Criminal Procedure Code, the entire freezing of the account is not vitiated."

This judgment is in a case of corruption wherein the accounts of the accused therein have been frozen and in a case of corruption, the investigation is done entirely on a different platform and therefore the decision arrived at by the learned single Judge pertaining to the facts and circumstances encircling the said case have absolutely no bearing on the facts and circumstances and the position of law regarding the case in hand and therefore the norms held therein cannot be applied to this case.

In result,
(i) the above criminal original petition succeeds and the same is allowed.
(ii)The directions of the respondents 1 and 2 given to the Allahabad Bank, Salem and the State Bank of India Siruthozhil Branch, Salem by their requisitions dated 2.9.2002 and 5.9.2002 to freeze the accounts of the petitioner and his firms are hereby set aside.

Index: Yes
Internet: Yes

Rao

To

1.The Inspector of Police,
Shevapet Police Station, Salem.

2.The Inspector of Police,
Suramangalam Police Station,
Salem.

3.The Dy.Superintendent of Police,
CBCID., Coimbatore.

4.The Public Prosecutor,
High Court, Madras.